

In re) Fair Hearing No. 17,170
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Appeal of)

The petitioner appeals the decision by the Department of PATH denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a forty-nine-year-old woman with a high school education. She has a medical history of depression stemming from past spousal abuse and injuries sustained in a car accident in 1989. Presently her primary physical problems are migraine headaches and pain in her back and feet. It does not appear that she is currently receiving mental health therapy. She takes medication for her depression that is prescribed by her family physician.

2. The petitioner received Social Security Disability benefits and Medicaid for several years in the 1990s. In July 2000, following a hearing before a federal administrative law judge, she was found not disabled and no longer eligible for Social Security benefits. The petitioner did not appeal that decision. The Department discovered this determination in June 2001 and notified the petitioner that her Medicaid would

terminate as a result.

3. The petitioner appealed the decision to terminate her Medicaid. At a hearing held on August 28, 2001 the Department agreed to make a separate determination of the petitioner's disability in order to determine whether she was eligible for Medicaid and agreed to determine whether the petitioner was income eligible for VHAP. In October 2001 the Department notified the petitioner that she was not eligible for Medicaid because she was not disabled and that she was ineligible for VHAP because her income is in excess of the program maximum. The petitioner does not dispute the Department's VHAP determination.

4. The petitioner reports that she has been steadily employed as a cashier at a supermarket since 1999. She works about 25 hours a week, and does not allege that her employer makes any accommodation for her in terms of hours or working conditions. She states that she is looking for other work because she finds it difficult to be on her feet all day. The petitioner does not allege any physical or mental impairment that would prevent her from working at a sedentary job for which she might qualify.

5. The only narrative medical records in the petitioner's file are the reports of consultative psychological assessments of the petitioner made by the same psychologist at the request of the Social Security Administration in June 1998 and February 2000. In both

reports the petitioner was noted to be employed and functioning well. No significant mental impairment was noted.

6. Although the petitioner feels she has significant physical and emotional problems, she does not deny that she has been able to work steadily for several years. The record notes that she has remarried and appears to have a stable home life.

ORDER

The decision of the Department is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

The disability of an individual 18 or older is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations define "substantial gainful activity" as work done for pay that involves significant mental and physical activities, even if done part time. W.A.M. § M211.21, 20 C.F.R. § 416.972. The federal guidelines for determining whether a specific job constitutes substantial

gainful activity is whether it is not considered "sheltered" work done in a "special environment" and whether the employee earns wages comparable to an unimpaired person in the same types of jobs in the community. 20 C.F.R. § 416.974.

The petitioner's present work clearly meets these guidelines. Even if it didn't, there is no medical evidence (and the petitioner does not allege) that her impairments prevent her from performing a wide range of other types of jobs. Under the federal regulations a person of the petitioner's age, education, and work experience would be found not disabled even if she were limited to sedentary work. 20 C.F.R., Subpart P, Appendix 2, Rule 201.18 et seq.¹ This being the case, it must be concluded that the Department's decision is in accord with the pertinent regulations. Thus, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹ Because of this, the petitioner also does not qualify for Medicaid under the rules for "working disabled". See W.A.M. § M200(16).